

Internal Revenue Service

Department of the Treasury **NO POST RECEIVED**
Release copies to District

Washington, DC 20224

Date 9/29/97

Contact Person: [REDACTED]

Surname [REDACTED]

Telephone Number: [REDACTED]

In Reference to:

CP:E:EO:T:5

Date: **AUG 18 1997**

Employer Identification Number: [REDACTED]
Key District: [REDACTED]

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3). Based on the information submitted, we have concluded that you do not qualify for exemption under that section. The basis for our conclusion is set forth below.

According to your Form 1023 Application (including related correspondence), you were organized on [REDACTED] nonprofit corporation. You are dedicated to increasing the participation of [REDACTED] women-owned businesses in government and corporate contracting. A [REDACTED] prepared for [REDACTED] found evidence of significant discrimination against women-owned businesses in several industries in the metropolitan area. Nationally, women-owned businesses receive less than 2% of federal procurement dollars (less than 0.2% of government contracts over \$25,000), although they own 31% of all businesses and start the majority of new businesses. The Federal Acquisition Streamlining Act of 1994 set a goal of allocating 5% of the value of all prime contracts and sub-contracts to small business concerns owned and controlled by women, but established no methods for reaching the goal. The Act also established electronic commerce guidelines (electronic data interchange, or EC/EDI) for government purchasing, and soon only businesses capable of computer-based bidding will be able to obtain government contracts. It is expected that once an effective vendor database is established, private companies will also use it for buying. Many women-owned businesses are reluctant to embrace EC/EDI technology; do not see the government as a valuable customer; lack marketing skills; and lack access to working capital.

You also have a purpose to increase government contracting in [REDACTED] with in-state businesses, thus boosting the State economy. Two-thirds of the procurement dollars of the largest government and private entities in the state went to out-of-State

[REDACTED]

contractors in [REDACTED], and the majority of the purchases were reportedly due to the perception that the product was not available in the State. Government agencies in [REDACTED] have worked closely with you in developing your purpose and providing funding and lists of women-owned businesses.

You will provide seminars and other training (e.g., speakers at other women's business associations) to women-owned businesses in the following areas: government and private procurement practices; computers and EC/EDI; marketing; and financial assistance (e.g., obtaining loans from banks). You co-sponsored two EC/EDI seminars in [REDACTED] with [REDACTED] and [REDACTED]

You will also establish and operate an online procurement database system of women-owned businesses to help market women-owned businesses to buyers and contractors looking for women-owned businesses. The system will be compatible with EDI and used to register the participating business with all participating government agencies and private companies. The database will include for each business a description of the business's products and capabilities, contract history, and details on certification as women-owned. The system will include E-mail between buyers and vendors, and an electronic bulletin board for: education and training tips; networking among businesses; announcements for training conducted by you or government agencies; and contract bidding deadlines. The system is flexible enough to allow future expansion for minority businesses or all businesses in the state, and could tie into national database networks, although there are no firm plans for such a tie-in.

You have a board of [REDACTED] elected by your voting members (small businesses owned and controlled by women, as defined in the federal Small Business Act). At least [REDACTED] of the directors must be women who own businesses in [REDACTED]. You will also have nonvoting members consisting of all businesses and organizations that wish to join your vendor, buyer, or supporter database (even if not women-owned). All members will be assessed dues of \$[REDACTED].

You have a working relationship with [REDACTED] [REDACTED], a 501(c)(3) organization. [REDACTED] is participating in a collaborative effort with other nonprofits, federal agencies, and national laboratories to develop a centralized vendor/buyer on-line system of manufacturers and suppliers in [REDACTED] consisting mainly of a database and

bulletin board system. You have contracted with [REDACTED] develop the database system.

You have received start-up funding from grants from government and nonprofit organizations. You plan to rely primarily on contributions and grants for support, with the remainder of your support coming from membership dues, royalties from the sale of software rights, seminar admissions, fundraisers, and book sales.

Section 501(c)(3) of the Internal Revenue Code exempts from federal income tax organizations organized and operated exclusively for charitable, educational, or certain other purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(c)(1) of the Income Tax Regulations provides that an organization "operates exclusively" for exempt purposes only if it engages primarily in activities that accomplish such purposes. It does not operate exclusively for exempt purposes if more than an insubstantial part of its activities does not further such purposes.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization is not organized or operated exclusively for exempt purposes under section 501(c)(3) of the Code unless it serves a public rather than a private interest. Thus, an organization must establish that it is not organized or operated for the benefit of private interests, such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled by such private interests.

Section 1.501(c)(3)-1(d)(2) of the regulations provides that the term "charitable" is used in section 501(c)(3) of the Code in its generally accepted legal sense and is, therefore, not to be construed as limited by the separate enumeration in section 501(c)(3) of other tax-exempt purposes which may fall within the broad outlines of "charity" as developed by judicial decisions. Such term includes: Relief of the poor and distressed or of the underprivileged; advancement of religion; advancement of education or science; erection or maintenance of public buildings, monuments, or works; lessening of the burdens of Government; and promotion of social welfare by organizations designed to accomplish any of the above purposes, or (i) to lessen neighborhood tensions; (ii) to eliminate prejudice and discrimination; (iii) to defend human and civil rights secured by law; or (iv) to combat community deterioration and juvenile delinquency.

providing an employment agency for the benefit of members. The Service also ruled the organization not exempt under section 501(c)(6), reasoning that the organization operated primarily as an employment agency for the benefit of its members,

professional women that promoted the acceptance of women in business and the professions. The activities included sponsoring conventions, luncheons, and dinner meetings devoted to the consideration of problems relating to career opportunities for women and various issues centering around attitudes towards women in business. Additionally, the organization awarded scholarships to female students and presented a young-woman-of-the-month award. The Service reasoned that the common business interest of the members was dealing with the problems unique to women in business, and that the organization promoted that common interest to the benefit of the lines of business represented by the members.

Rev. Rul. 80-287, 1980-2 C.B. 185, held exempt under section 501(c)(6) (but not 501(c)(3)) of the Code a lawyer referral service. The organization was created by several bar associations in a metropolitan area. From a list of attorneys maintained by the organization, an attorney specializing in the appropriate area of law was selected from within the geographic area preferred by the client. The organization arranged an appointment for the individual with the attorney, and the attorney agreed to charge a cut-rate nominal fee for the initial interview and remit the collected fee to the organization. Attorneys who were members of one of the local bar associations applied and paid a fee to have his or her name placed on the organization's referral list. With regard to section 501(c)(3), the Service reasoned that providing services of an ordinary commercial nature in a community, even though the undertaking is conducted on a nonprofit basis, generally is not regarded as conferring a charitable benefit on the community unless the service directly accomplishes one of the established categories of charitable purposes, which the organization did not. Although the lawyer referral service provided some public benefit, a substantial purpose of the program was promotion of the legal profession. With regard to section 501(c)(6), the Service distinguished the organization in Rev. Rul. 61-170 as primarily serving to locate customers for its members and providing a mere business referral service that was simply a convenience and economy to members. The Service considered the lawyer referral service as doing not merely that but also as improving the image and functioning of the legal profession as a whole by introducing individuals to the use of lawyers through the nominal fees for initial interviews.

Rev. Rul. 85-2, 1985-1 C.B. 178, held exempt under section 501(c)(3) of the Code an organization that provided legal assistance to volunteer guardians ad litem who represented abused and neglected children before a juvenile court that required

their appointment, on the ground of lessening the burdens of government. The organization employed attorneys to provide legal advice and representation to the lay volunteers, and operated a training program for the volunteers on how best to represent the interests of abused and neglected children. The organization was supported in part by grants from the juvenile court. The Service established a two-part test for determining whether an activity lessens government burdens: (1) whether a government unit considers the organization's activities to be its burdens; and (2) whether the activities actually lessen the burden. The government must objectively manifest that it considers the activity its burden, which may be shown by the interrelationship between the government and the organization. The fact that an organization is engaged in an activity that is sometimes undertaken by the government is insufficient to establish a burden of government. Similarly, the fact that the government expresses approval of an organization and its activities is also not sufficient to establish that the organization is lessening the burdens of government. The interrelationship between the organization and the government may provide evidence that the government considers the organization's activities to be its burden. To determine whether the organization is actually lessening the burdens of government, all of the relevant facts and circumstances must be considered. A favorable working relationship between the government and the organization is strong evidence of lessening of the government burdens.

In Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 279 (1945), the Supreme Court upheld a determination by the Service that an organization was not exempt under the 501(c)(3) predecessor statute. The organization's charter indicated the following purpose:

the mutual welfare, protection and improvement of business methods among merchants . . . so that the public can obtain a proper, clean, honest and fair treatment in its dealings or transactions with such merchants . . . and at the same time protecting the interest of the latter classes of businesses to enable such as are engaged in the same to successfully and profitably conduct their business.

The court stated that the presence of a single non-exempt purpose, if substantial in nature, will destroy exemption regardless of the number or importance of truly exempt purposes, and reasoned that an important if not the primary pursuit of the organization was to promote not only an ethical but also a profitable business community.

[REDACTED]

To qualify for exemption under section 501(c)(3), you must operate "exclusively" for exempt purposes, such as charitable or educational purposes. If the facts and circumstances indicate that you have a substantial purpose to benefit private individuals or that a substantial part of your activities benefits private individuals (other than incidentally), then you are not operated exclusively for exempt purposes.

While some of your activities will further educational purposes, your online procurement database system, which advertises the businesses of your members and provides a forum for contracting with them, appears directed primarily to promoting the business of your members (mainly women-owned businesses [REDACTED]). Developing and running the database system appears to be a substantial activity, if not your primary activity. Like the nurse registry in Rev. Rul. 61-170, you are controlled by your members and appear to have a primary purpose to generate business for them. We find that you have a substantial purpose to promote the business of your members, and that your activities will benefit them to a substantial degree. Furthermore, you have failed to clearly establish that women-owned businesses in [REDACTED], as a class, are "poor or distressed or underprivileged" and thus deserving of such relief, as were the needy women in Rev. Rul. 68-167.

Even absent the private benefit to businesses discussed above, we find that the database activity is not an activity exclusively in furtherance of the charitable purposes of eliminating prejudice and discrimination or lessening the burdens of government. You have failed to clearly establish that developing and running the database system is an activity clearly designed to "eliminate prejudice and discrimination" against women-owned businesses in government and corporate contracting. The Revenue Rulings cited by you in this regard (72-228, 75-285, and 76-205) primarily involve counseling and education of individuals and investigation of instances of discrimination rather than assistance to business owners like that provided with the procurement database system.

You also have failed to clearly establish that your proposed activities will lessen the burdens of government in contracting. Few of the indicia considered significant by the Service in determining that an organization is lessening the burdens of government are present in this case. For instance, you were not created by a statute; you are controlled by your members (private businesses) rather than any government agency; there is no evidence that your database activity was previously conducted by a government agency for a significant length of time; and your

activities do not appear to defray any significant expenses of government.

Accordingly, you do not qualify for exemption as an organization described in section 501(c)(3) of the Code and you must file federal income tax returns.

Contributions to you are not deductible under section 170 of the Code.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted within 30 days from the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practices Requirements.

If you do not protest this ruling in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Code provides, in part, that a declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within 30 days, this ruling will become final and copies will be forwarded to your key district office. Thereafter, any questions about your federal income tax status should be addressed to that office. The appropriate State Officials will be notified of this action in accordance with Code section 6104(c).

When sending additional letters to us with respect to this case, you will expedite their receipt by using the following address:

Internal Revenue Service
Attn: CP:E:EO:T:5- [REDACTED], Room 6539
1111 Constitution Ave, N.W.
Washington, D.C. 20224

[REDACTED]

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

(signed) Garland A. Carter

Garland A. Carter
Chief, Exempt Organizations
Technical Branch 5

initiator
CP/EOTS

[REDACTED]
[REDACTED]

reviewer
CP/EOTS

[REDACTED]
[REDACTED]
[REDACTED]